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09/891,568	06/26/2001	William A. Sobonya	M 6817 MANCO	1960

7590

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT

PAPER NUMBER

1771

10

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS 10

# Office Action Summary

Application No.

09/891,568

Applicant(s)

SOBONYA ET AL.

Examiner

Ula C Ruddock

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The Examiner has carefully considered Applicant's present response filed April 28, 2003.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Claim Rejections - 35 USC § 103*

3. Claims 1-5, 7, 9-12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawley (US 5,854,144) in view of Owen (US 5,863,845 and 5,874,371). It should be noted that the Examiner will be interpreting a "continuous coating of foamed resin" as defined on page 4, lines 12-14 of the specification, i.e. a coating which does not contain pores which extend from a first surface to an opposite second surface through the foamed resin. Hawley discloses a cushioned liner laminate having a smooth top and a continuous non-slip foam bottom (abstract). With regard to claim 2, the foam material is a polyurethane foam (col 3, ln 16-17). The foam material has no apertures through its entire depth (claim 9), which the Examiner is equating to Applicant's continuous coating of a foamed resin. The foam material is carried by a polyester nonwoven spunbond fabric (col 3, ln 1-2), as claim 15 requires that the fabric have spun strands. With regard to claims 7 and 14, the total sheet thickness of Hawley's composite is approximately .048 inches or 48 mils (claims 2 and 7). With regard to claim 9, the composite has a smooth surface top sheet layer (col 2, ln 28-30). With regard to claim 10, because the sheet can be used to line drawers (col 1, ln 12-14), the surface would inherently be horizontal. Hawley discloses the claimed invention except for the teaching that a woven or non-woven scrim is embedded in the foamed resin.

Owen discloses a non-skid covering (abstract) comprising a cured polyvinyl chloride resin (col 2, ln 23-25) applied to a woven or non-woven scrim (col 2, ln 5-7) of plastic material, i.e. synthetic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the plastic woven or non-woven scrim of Owen in place of Hawley's fabric, motivated by the desire to obtain a laminate with increased strength and durability.

Rejection is maintained.

4. Claims 6, 8, 13, and 16 are rejected under 35. U.S.C. 103 (a) as being unpatentable over Hawley (US 5,854,144) and Owen (US 5,863,845 and 5,874,371), as applied to claims 1-5 above, and further in view of McDermott, III et al. (US 5,120,587). Hawley and Owen disclose the claimed invention except for the teaching that the foamed resin is a foamed polyvinyl chloride plastisol and that the sheet product has a thickness of from about 55 to 100 mils.

With regard to claims 6 and 13, it should be noted that, by definition, a plastisol is "a substance consisting of a mixture of a resin and a plasticizer that can be molded, cast, or made into a continuous film by application of heat." (*Merriam Webster's Collegiate Dictionary*, 10<sup>th</sup> Edition). McDermott, III et al. (US 5,120,587) disclose a support binder in the form of a scrim in which foam material surrounds the openings of the scrim (abstract). The foam material preferably comprises a mixture of polyvinyl chloride (PVC) and a plasticizer (col 6, ln 65-67). As a result, McDermott's foamed mixture of PVC and plasticizer is a foamed polyvinyl chloride plastisol, as disclosed in the present invention. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used McDermott's foamed polyvinyl

chloride plastisol as the foamed resin of Hawley and Owen, motivated by the desire to obtain a liner with flexibility and strength.

With regard to claim 8, it should be noted that optimizing the thickness of the composite is a result effective variable. Increasing the thickness of the composite directly affects the strength of the entire composite. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the thickness of Hawley's and Owen's composite sheet be from about 55 to about 100 mils, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized the composite thickness motivated by the desire to obtain a composite with increased strength and durability.

With regard to claim 16, the combination of Hawley, Owen, and McDermott, III et al., disclose a foamed polyvinyl chloride, a woven polyester scrim, and that the sheet has a thickness of from about 45 to 150 mils.

Rejection is maintained.

### ***Response to Arguments***

5. Applicant's arguments filed April 28, 2003, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that Hawley discloses a laminate sheet structure rather than a composite sheet structure. This argument is not persuasive because the structure of the present invention and the structure of Hawley's invention are the same. Furthermore, one having ordinary skill in the art would treat the terms of "composite" and "laminate" as interchangeable. *Merriam-Webster's Collegiate Dictionary* defines the term composite as a

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"solid material which is composite of two or more substances" and a laminate is defined as "united superposed layer of one or more materials." Applicant also argues that that scrim of Hawley is not completely embedded in the foam so that the foam covers both the top and bottom surfaces of the scrim. This argument is not commensurate in scope with the claim because the present claims do not require that both the top and bottom surfaces of the scrim be completely embedded and covered by the foam. Applicant also argues that Hawley structure requires that a continuous sheet be laminate to one surface of the fabric or scrim to form a continuous decorative surface. This argument is also not persuasive because the present claims do not preclude a continuous sheet being laminate to a surface of the fabric. Furthermore, the claims are written with open language, i.e. comprising.

Applicant further argues that there is not teaching or suggestion to substitute the non-skid Owen scrim for the scrim in Hawley. This argument is unclear because the Examiner, as shown in Paper #8, is substituting the scrim of Owen for the fabric of Hawley. One having ordinary skill in the art would have used the scrim of Owen in place of Hawley's fabric, motivated by the desire to create a laminate that is lightweight and has increased strength and durability. Applicant again argues that the combination of Hawley and Owen would not provide a scrim embedded in a continuous coating of foamed resin in which the continuous coating of foamed resin covers the top surface and the bottom surface. This argument is not persuasive because the claims as written do not require that both the top and bottom surfaces of the scrim be covered.

Applicant also argues the use of the McDermott, III et al. patent in combination with Hawley and Owen. Applicant argues that McDermott, III et al. would not teach or suggest to one skilled in

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the art to apply a foamed polyvinyl chloride plastisol to the substrate of Hawley and Owen to provide a non-skid surface without the use of a pressure sensitive adhesive which is not wanted in the present structure. This argument is not persuasive because the claims do not preclude the use of an adhesive because the claims are written in open language format. Applicant further argues that McDermott, III et al. is completely silent concerning the thickness of the composite. This argument is not persuasive because the Examiner has not relied upon McDermott, III et al. for its teaching of thickness. The Examiner, in Paper #8, has stated that optimizing the thickness of the Hawley, Owen, and McDermott, III et al. composite is a result effective variable because increasing the thickness of the composite directly affects the strength of the entire composite.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

UCR *UCR*  
July 14, 2003

*Ula Ruddock*